

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

**MARFORK COAL COMPANY, INC., a
West Virginia corporation,**

Plaintiff,

v.

**CIVIL ACTION NO. 5:10-cv-0069
(Judge Irene C. Berger)**

**DAVID AARON SMITH, AMBER NITCHMAN,
ERIC BLEVINS, JOSHUA FRANCISCO GRAUPERA,
and ISABELLE ROZENDAAL,**

Defendants.

JOINT MOTION TO STAY CASE AND VACATE REMAINING DEADLINES

Plaintiff Marfork Coal Company, Inc. (“Marfork”), by counsel, and Defendants David Aaron Smith, Amber Nitchman, Eric Blevins, Joshua Francisco Graupera, and Isabelle Rozendaal (collectively “Defendants”), by counsel, respectfully move the Court to stay this case and vacate all remaining deadlines in the Court’s Scheduling Order. In support of this Joint Motion, the parties state as follows:

1. A Scheduling Order was entered by this Court on May 4, 2010, setting the trial in this matter for June 14, 2011. According to the Scheduling Order, the following deadlines remain: May 9, 2011 – Marfork’s portion of Proposed Pretrial Order due to Defendants; May 16, 2011 – final Proposed Pretrial Order, signed by all counsel, due to Court; May 26, 2011 – Pretrial Conference; June 6, 2011 – proposed jury instructions and verdict form due to Court; June 13, 2011 – Final Settlement Conference; June 14, 2011 - Trial.

2. The parties have reached a general agreement to settle this case. Moreover, counsel in this case have been working towards settlement of related cases pending in the Circuit

Courts of Raleigh County and Boone County, West Virginia. The parties to all of these cases are in the process of finalizing the settlement papers to resolve all of these matters.

3. If this case were to proceed according to the Court's Scheduling Order, the ability of the parties to adequately prepare for trial and to meet the remaining deadlines would be compromised, and it would cause the parties to incur unnecessary costs in light of the expected completion of the pending settlement and necessary settlement documents.

WHEREFORE, the parties respectfully request that the Court enter an Order staying this case and vacating all remaining deadlines under the Court's Scheduling Order so that the parties may work towards finalizing settlement of this matter.

Submitted jointly by:

/s/ Samuel M. Brock III

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CERTIFICATE OF SERVICE

I, Samuel M. Brock III, counsel for Marfork Coal Company, Inc., hereby certify that on May 6, 2011, I electronically filed the foregoing **Joint Motion to Stay Case and Vacate Remaining Deadlines** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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